Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)))))))	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)))	CC Docket No. 90-571
	)	
Administration of North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	))))	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To The Commission:

COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OF CALIFORNIA (AALLIED@) IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING

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I.
INTRODUCTION

Allied Personal Communications Industries Association of California ("Allied")[1] respectfully submits these comments in response to the Further Notice of Proposed Rulemaking released by the Commission on February 26, 2002 in the above-captioned proceeding (the "FNPRM"). Universal service clearly plays a significant role in the provision of telecommunications services in this country and Allied appreciates the efforts the Commission has made to ensure its continued viability. Nonetheless, Allied believes the proposed connection-based assessment for the collection of Universal Service Fee ("USF") charges is an inappropriate and misguided attempt to modify the current program.

In brief, the proposal to adopt a connection-based assessment violates Section 254(d) of the Communications Act of 1934, as amended (the "Act"). Among other things, the proposal outlined in the USF imposes a <u>257% increase</u> in paging carriers' respective USF burden despite the fact that there has been no corresponding increase, or increase of any sort, in paging revenue generated from interstate traffic. In contrast, interexchange carriers, local exchange carriers and cellular carriers, all of whom provide substantial interstate telecommunications services, will see their respective USF obligations <u>decrease</u> or, in the case of cellular, increase by <u>less than half</u> of the paging carriers' proportionate increase. Moreover, paging carriers, unlike the other carrier groups that contribute to the USF, are not even eligible to draw from the fund to provide services. Thus, the connection-based assessment is discriminatory, inequitable and fails to meet the Commission's standards for competitive neutrality. (See Section II.1-3, infra.)

In addition, the proposed shift to a connection-based assessment has no practical or administrative advantages. At best, it merely replaces a well-established assessment model with a new program that is rife with uncertainty, subject to legal challenges, costly to implement and at least as difficult, if not more difficult, to administer as the current plan. (See Section II.4, infra.) As a purely practical matter, a connection-based assessment would likely cause irreparable damage to the paging industry which is already facing serious challenges. The increased (and unjustifiable) contribution levels under the proposed assessment, not to mention the imposition of connection-based contribution and reporting requirements on numerous carriers that currently meet the *de minimis* exception of 47 C.F.R. Section 45.708, create significant burdens. These burdens could seriously threaten the viability of an industry sector that otherwise provides vital, <u>low-cost</u>, <u>reliable</u> telecommunications services to millions of public safety personnel and ordinary citizens through the country. (See Section II.7, infra.)

Finally, most, if not all of the potential problems faced by the USF that have been identified by the Commission can be readily addressed by the current revenue-based assessment as it exists or as it may be modified so that contributions are based on projected, forward-looking costs and revenues. (See Section II.7, infra.)

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[1] Allied is a trade association, which for more than forty years has represented the interests of national, regional and local, paging carriers doing business in the State of California. Allied has recently broadened its mission to address federal regulatory/legislative issues, and expanded its membership to include paging carriers that operate in the various states throughout the country.

For the above reasons, Allied submits that the proposed connection-based assessment be rejected and that the current revenue-based assessment be maintained.[2]

II.
A CONNECTION- BASED ASSESSMENT VIOLATES SECTION 254(d) OF THE ACT

Section 254(d) of the Act requires, in part, that:

> "[e]very telecommunications carrier that provides interstate telecommunications shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service." (emphasis added)

However, the proposed connection-based assessment model is inequitable, discriminatory and fails to meet the Commission's standards for competitive neutrality.

1. A Connection-Based Assessment Would Place a Disproportionate Burden on Paging Carriers.

The proposed connection-based assessment places a disproportionate burden on paging carriers. In particular, the new model would adjust the respective USF obligations of various carrier groups as follows:

[2] The only significant group to support per unit assessment is the major interexchange carriers – the same group that is proposing to shift the responsibilities for assessment and collection onto local exchange and wireless carriers. See, e.g., AT&T Corporation Comments at pp. 11-13; Sprint Corporation Comments at pp. 8-10; and Worldcom, Inc. Comments at pp. 16-25. Almost every other interested party has voiced its opposition to such a model and its support of maintaining a revenue-based model. See, e.g., Cingular Comments at pp. 6-7; Qwest Comments at pp. 8-9; PCIA Reply Comments at pp. 2-6; Arch Comments at p. 5; Association of Communications Enterprises Comments at pp. 5-6; National Exchange Carriers Association, Inc. Comments at pp. 2-6; Organization for the Promotion and Advancement of Small Telecommunications Companies Comments at pp. 5-7; Rural Cellular Association Comments at pp. 5-7; United States Telecom Association Comments at pp. 4-5; Iowa Utilities Board Comments at p. 2; Comments of Texas Office of Public Utility Counsel, Consumer Federal of America, and Consumers Union at pp. 7-9.

- Paging Carriers -- Increase by 257%
- Cellular Carriers -- Increase by 117%
- ILECs/IXCs -- Decrease by 22%[3]

In other words, this proposal has the effect of increasing the safe harbor provision for paging carriers from 12% to 43% of total revenue (with a corresponding increase for cellular carriers from 15% to 33% and a decrease in interstate revenue of 22% for interexchange carriers and ILECs). The record supports no such findings. In fact, just the opposite is true: there has been no measurable shift of interstate service or revenue to paging carriers (nor would such a shift be possible given the general nature of paging services). Shifts in interstate traffic, as well as revenue increases, if any, have accrued to the ILECs and to cellular carriers while some interexchange carriers have apparently experienced a decline in interstate revenue.[4] Thus, the record simply does not – and cannot – justify a 257% increase in USF contributions from paging carriers.[5]

[3] These adjustments are based on the Commission's analysis that average monthly USF obligations per "connection" increase for paging carriers from \$.07 to \$.25; increase for cellular carriers from \$.46 to \$1.00 and decrease for interexchange carriers and local exchange carriers from \$1.29 to \$1.00. See FNPRM at ¶ 59.

[4] See FNPRM at ¶¶ 7-11. To the extent total interstate revenues for all telecommunications carriers decline, contribution levels can be increased to account for revenue shortfalls and/or safe harbor provisions can be adjusted as warranted by the record. See Section II.7, infra.

[5] The fact that paging carriers are not eligible to draw from the USF, unlike the other carrier groups which each can potentially be designated as ETCs, only serves to further highlight the inequitable and discriminatory nature of a connection-based assessment.

2. A Connection-Based Assessment Is Not Competitively Neutral.

As the Commission has previously determined with respect to USF contributions, as well as many other FCC-imposed surcharges, carrier contributions must be assessed in a competitively neutral manner. The current revenue-based assessment has already been found to meet that standard.[6] By way of contrast, the proposed connection-based assessment cannot be characterized as competitively neutral.

In addition to the fact that the proposed increase in assessment imposes a disproportionate and unjustifiable USF burden on paging carriers, and an inexplicable decrease in USF contributions for local exchange carriers and interexchange carriers (see Section II.1, supra), a per "connection" fee is inherently not competitively neutral. Since the unit of measurement, i.e., the "connection", bears no relation to interstate revenue, it requires carriers, which provide little, if any, interstate telecommunications service to their endusers (e.g., many small to mid-sized paging companies) to contribute disproportionately with carriers that provide substantial interstate service to their endusers (e.g., interexchange carriers).[7] Moreover, as the number of "connections" for a carrier increase or decrease, it leads to further distortions in

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[6] *See* Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd. 8776, 9206-09, ¶¶ 844-850 (1997), as corrected by Federal-State Joint Board on Universal Service, Erratum, CC Dkt No. 96-45, FCC 97-157 (rel. June 4, 1997), aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC 183 F.3d 393 (5th Cir. 1999), cert. denied 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) ("Universal Service Order").

[7] So-called "equivalence" adjustments do not remedy this problem. For example, one would minimally expect that the ratio of the connection-based assessment between paging and cellular carriers to be the same as it is under the current revenue-based assessment. Instead, the ratio is 1:4 (i.e., $.25 v. $1.00) whereas it is 1:7 under the revenue-based model (e.g., ($8 Paging ARPU)(.12% Safe Harbor)/($45.27 Cellular ARPU)(.15% Safe Harbor)). Allied suspects the inequity would be even greater if it had the date to compare the ratio between paging carriers and IXCs/ILECs.

assessing and/or adjusting contribution levels.[8] In addition, certain cellular carriers bundle cellular, SMS and paging services in one "connection", thus competing against paging carriers who provide only paging services per one "connection". Paging carriers are forced to compete with those carriers with another proverbial "hand tied behind their back". Under any circumstances, a connection-based assessment cannot be competitively neutral since the unit of measurement is inherently unequal.

3. A Connection-Based Assessment Effectively Imposes a Charge On Intrastate Telecommunications Services.

As the Commission is aware, Section 254(d) provides for USF contributions to be assessed only upon those carriers that provide interstate telecommunications services. The Commission has also determined that such assessments can be made only on the interstate/ international revenues of the carrier, and not upon the intrastate revenues.[9] However, connection-based assessments do exactly that since they completely blur the distinction between intrastate and interstate revenue. There is simply no way of determining whether a particular "connection" has any interstate component. Thus, carriers like many local and mid-sized paging carriers that– for all practical purposes – provide only intrastate service to their end users are

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[8] The inherently discriminatory nature of a connection-based assessment is perhaps best illustrated in the current Proposed Rulemaking Proceeding for Regulatory Fees. See Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 02-64, Notice of Proposed Rulemaking, FCC 02-92 (rel. March 27, 2002) ("Regulatory Fee NPRM"). In that NPRM, the Commission is tasked with adjusting contribution levels to account for an increased Regulatory Fee Budget of 9.3%. However, the proposed contribution adjustments – which for paging and cellular – are based on projected number of units (and not revenue) are 60% for paging and -11% for cellular. At the same time, interstate telecommunications providers (including IXCs and ILECs) – whose adjustments are based on interstate revenues - are scheduled for a 16% increase. See Regulatory Fee NPRM at Ex. C. There is simply no rational basis to justify such disparate treatment although it does serve to illustrate the inherent problems of relying on a connection-based model. Allied intends to address the issues raised in the Regulatory Fee NPRM in separate comments which are due on April 23, 2002.

[9] See 47 C.F.R. § 54.706(b); see also, Texas Office of Public Utility Counsel v. FCC, (5th Cir. 1999) 183 F.3d 393, 488.

forced to contribute to USF even though those "connections" do not generate any interstate revenue.

4. There are No Regulatory or Practical Advantages to a Connection-Based Assessment.

In addition to the fact that a connection-based assessment violates Section 254(d) of the Act, it offers no practical or administrative advantages over the current revenue-based model. Aside from the superficial appeal of such an assessment (it appears simpler to count "connections" and multiply by a flat fee), a connection-based model merely replaces a well-established revenue-based assessment with one that will be at least as cumbersome to monitor and implement. The potential complications with a connection-based assessment are daunting.

First, the Commission (and the industry and other interested parties) would have to determine how to calculate – and monitor – the number of reported "connections" per carrier. For example, how many "connections" are contained in a PBX? Would a carrier that bundles cellular, paging and SMS services in a single unit be assessed for three "connections", or just one? How will the model be updated as new technologies arise which do not depend on "connections" as we currently understand the term? The potential challenges (legal and otherwise) to even defining the program could delay implementation for years.

Second, the carriers (as well as the Commission) will have to spend considerable resources to develop a new reporting format, train personnel to be able to accurately complete the form and recalibrate billing systems to pass on the costs to end-users. As it currently stands, the reporting requirements faced by carriers – whether in the form of NRUP filings, 499-A reports or others – are already burdensome (if not overwhelming). For many larger carriers, "compliance departments" have been created to keep up with these demands; for smaller to mid-sized carriers, the burden falls on already over-extended employees. In addition, the administrative costs of developing a new "form" and the corresponding instructions are immense. Moreover, carriers have already invested significant resources in creating systems to comply with the reporting requirements under the current program.

Third, a connection-based assessment will likely create incentives for some carriers to package their services in such a way as to reduce the number of "connections", and thus their USF obligations, in order to gain a competitive advantage.

Fourth, as the Commission noted, adjustments to connection-based assessments as a result of changes in the telecommunications market (e.g., increased connections, reduced USF outlay, shift in connections among carrier types) will require complex recalibrations – and additional proceedings – to implement.[10] Given that the connection-based assessment is set as a flat rate, even inflation factors will require complicated adjustments to be made.

Fifth, and perhaps most importantly, there does not appear to be any practical (or legal) rationale to discard the current revenue-based model. The Commission has long recognized and utilized revenue-based assessments to ensure fair, non-discriminatory and competitively neutral surcharge and cost-recovery models.[11] Carriers are familiar with the Form 499-A and the concept of revenue-based reporting. In fact, the revenue-based model is used for almost all, if not all, FCC and state imposed surcharges including Telephone Relay Service, Universal Service, Number Administration and Local Number Portability Support Mechanisms. (See FCC

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[10] FNPRM at ¶ 75.

[11] See e.g., In re Number Resource Optimization, FCC 00-104, Report and Further Notice of Proposed Rulemaking (rel. March 31, 2000) ¶207. ("We further conclude that the costs of thousands-blocks number pooling be allocated to all telecommunication carriers in proportion to each carrier's interstate, intrastate and international telecommunication end user revenues.")

Form 499-A.) There has been no showing that this model is no longer valid as it relates to USF or any other fund.

5. The *De Minimis* Exception Should be Maintained

Allied strongly encourages the Commission to maintain the *de minimis* exception authorized in Section 254(d) and codified at 47 C.F.R. § 54.708 (i.e., carriers with annual USF contributions of less than $10,000 do not need to contribute).

This exception provides essential relief to numerous carriers, and in particular small to mid-sized paging companies which are sorely pressed to provide low-cost services and keep up with all the federal (and state) mandated compliance filings. Moreover, these small to mid-sized paging companies provide little, if any, interstate communications, and cannot readily absorb, or pass on, additional regulatory fees of this magnitude. In many ways, the *de minimis* exception acts as a surrogate for being designated an intrastate carriers. If these carriers were forced to contribute to the USF, as they would under a connection-based assessment, it could be financially devastating to the carriers and the availability of these vital, low-cost services to their end users.[12]

6. The Imposition of a Connection-Based Assessment is Potentially Devastating to the Paging Industry.

As recognized throughout the telecommunications industry, the paging industry is faced with serious challenges. Almost all of the national paging carriers (including PageNet, Arch Communications, TSR Wireless LLC, Mobilemedia Communication, Weblink Wireless and

[12] Under a connection-based assessment, numerous paging carriers who have previously been exempt will now be required to contribute to USF. For example, under the revenue-based assessment, carriers with less than 12,750 end users (assuming an ARPU of $8.00/month and a 12% safe harbor provision) are exempt. However, under the proposed assessment, only carriers with less than 3,333 end users are exempt. Thus, if the Commission were to somehow adopt the connection-based assessment, Allied requests that it adjust the *de minimis* exception accordingly so that carriers who are currently exempt maintain their status.

Metrocall) have filed for bankruptcy protection, or announced their intention to do so. The total number of paging subscribers has declined. The capital markets have turned their backs on the industry and the primary infrastructure providers (Glenayre and Motorola) have left the field. In addition, PCIA, the (former) national industry organization has recently declared that it is no longer representing the interests of paging carriers on regulatory or legislative matters.

Nonetheless, the paging industry is prepared to face these challenges. Numerous carriers – national, regional and local - remain dedicated to providing their end users with low-cost, highly reliable paging services as well as new technologies. New manufacturers have arisen to fill the void created by Glenayre and Motorola and carriers are in the process of forming new national organizations to represent the industry and the vital services it provides.

Even if the paging industry were enjoying the fruits of an economic boom, carriers should not be saddled with a disproportionate share of USF obligations. Under the current conditions, the industry simply cannot absorb such inequitable obligations while it works to face the other challenges that lie ahead. While the paging industry seeks no favors from this Commission, it does not expect disproportionate burdens either.

7. <u>Any Potential Contribution Shortfall Can Be Addressed Under the Revenue-Based Assessments</u>.

Allied has no basis to dispute that interstate revenues for some interexchange carriers may have declined.[13] Nor does it take issue with the Commission's statements that competition in the interexchange market continues to increase as a result of RBOCs (whose Section 271 applications have been approved) providing interexchange service and cellular carriers that have

[13] FNPRM at ¶7

bundled interexchange service with their traditional services.[14] It seems self-evident that if overall interstate revenues decline and current USF contribution factors remain constant, the USF could be faced with a shortfall. However, a revenue-based assessment is perfectly suited to adjust for such market shifts in a competitively neutral manner. Any potential shortfall can be made up by either adjusting the contribution level of all carriers equally and/or by adjusting safe-harbor provisions where supported by the record.

Alternatively, and as a way to simplify the current system, avoid some of the problems created by making assessments based on historical revenue reporting, and provide some predictability at least on an annual basis, USF contribution levels could be based on a projected-cost/revenue model such as those used for other regulatory fees.[15] This can be accomplished as follows:

1. Determine the expected annual cost of USF;
2. Determine the projected interstate/international revenue for each contributing industry segment;[16]
3. Determine the appropriate contribution factor necessary to cover annual USF costs;

For example, assume the following:

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[14] FNPRM at ¶9-11

[15] See 47 U.S.C. § 159(b)(1); see also Regulatory Fee NPRM at ¶ 9-10.

[16] The Commission already compiles most of this data (or the date from which revenues can be derived) in the context of other proceedings. See, e.g., Regulatory Fee NPRM at Ex. C.

1. USF Annual Funding Requirement $5 Billion

2. Projected Interstate/International Revenue[17]

IXC/ILE Interstate Revenue	$66.5 Billion
Cellular Carrier Interstate Revenue	$8.6 Billion
Paging Interstate Revenue	$0.3 Billion
Total	$78.9 Billion

3. Annual Contribution Factor: $5 Billion/$78.9 Billion = .063371%

This proposal provides a simpler, more efficient model and ensures – to the greatest extent possible – that USF contributions are assessed equitably and in a competitively neutral manner in accord with Section 254(d).[18] Regardless of whether the current revenue-based assessment is maintained or modified as described above, the potential solution to any potential problem with the USF clearly does not lie with a connection-based assessment.

III.
CONCLUSION

For the reasons discussed above, the connection-based assessment proposed in the USF imposes a disproportionate burden on paging carriers and is otherwise inequitable and discriminatory.[19] It also fails to meet the Commission's competitive neutrality standard and

[17] These projected revenue figures were taken from the figures used by the Commission in the Regulatory Fee NPRM at Exhibit C. The Revenue figures for ILECs/IXCs is based on the projected figure for Interstate Telecommunications Service Providers which happens to be based on data from Form 499-A. The revenue figures for cellular and paging were derived by multiplying the projected number of units in Exhibit C by the ARPU figures in the USF times the current safe harbor provisions of 15% for cellular and 12% for paging. To the extent that the Commission determines that the record supports adjustments to safe harbor provisions for either cellular or paging, the projected revenue and thus the contribution factor would be adjusted accordingly.

[18] Projected USF costs for the following year can be adjusted to account for any shortfall or surplus from the prior year.

[19] Allied also notes that Sprint's proposal – while perhaps well intentioned – suffers from all the defects discussed above because it is still a connection-based model. Moreover, according to the FNPRM, Sprint's proposal would result in a 55% increase for paging carriers, a 56% increase for LECs/IXCs and a 0% increase for cellular carriers. See FNPRM at ¶ 60. As discussed above, these adjustments violate Section 254(d) and are otherwise completely unjustifiable.

could otherwise seriously compromise the continued viability of the paging industry. Moreover, the proposed model is not more efficient or easier to implement than the current revenue-based assessment. Finally, any potential problems created by the shift in interstate revenue among carriers can best be addressed under the current revenue-based model. Thus, Allied respectfully suggests that the Commission maintain the current revenue-based assessment and, if necessary, modify the contribution (and/or safe harbor provisions) as warranted by the record.[20]

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[20] Allied would also like to address some of the issues raised by the Commission in terms of how USF surcharges are passed on to consumers. First, Allied shares the Commission's concern that end-users should be able to clearly be able to determine any FNPRM charge that is passed through to them as a separate line item. FNPRM at ¶ 103. Although Allied believes that good business practices, prohibitions on deceptive advertising, as well as the Truth in Billing proceeding adequately address those issues, it supports the concept of clarifying such matters for endusers. Second, market forces should address any concerns created by certain carriers "marking up" the FNPRM surcharges. FNPRM at ¶ 98. Competition is so fierce in the paging industry that it is unclear if USF charges even can be passed through to consumers at all. Finally, Allied does not support month-to-month reporting for FNPRM contributions. See FNPRM at ¶ 80). Such a requirement would only serve to stretch limited resources beyond the point of recognition. Moreover, Allied recognizes that the regulators are equally swamped by the influx of all these reports. It is difficult to imagine how either carriers or the Commission could keep up with a monthly deluge of such information. Thus, a monthly reporting requirement would only lead to requests for extensions of time and similar backlogs in processing at the Commission. Moreover, if the Commission adjusted assessments on a monthly basis, carriers would be sorely challenged to make the appropriate changes to their billing systems. Thus, the costs of imposing monthly reporting clearly outweigh any potential benefits.